IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

WP(C).No. 19804 of 2006(G)

RCRP.06/2004 of I ADDL. DISTRICT COURT, TRIVANDRUM
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PETITIONER:

PADMAVATHY AMMA,
THUNDUVILAKATHU, KAITHAMUKKU,THIRUVANANTHAPURAM.

BY ADV. SRI.L.MOHANAN
SMT.LIGEY ANTONY
SRI.M.V.KIRAN MOHAN

RESPONDENT:
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1. **C.P. RAVEENDRAN,**
T.C.27/350, KUZHIVILAKAM VEEDU,
KAITHAMUKKU, THIRUVANANTHAPURAM.

***Addl.2. R.KRISHNA KUMAR,**
S/O.C.P.RAVEENDRAN, AGAED 24,
T.C. 27/350, KUZHIVILAKAM VEEDU,
KAITHAMUKKU, THIRUVANANTHAPURAM.

***Addl.3. R.VIVEK, S/O.C.P.RAVEENDRAN,**
AGED 20, RESIDING AT DO. DO.

(*Addl.R2 and R3 are impleaded as per order in IA.No.6754/2007 dated 11.9.2007).

BY ADV. SRI.N.N.SUGUNAPALAN (SR.)
SRI.S.SUJIN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/10/2007, THE COURT ON 15/10/2007 DELIVERED THE FOLLOWING:

WP(C).No. 19804 of 2006(G)

PETITIONER'S EXHIBITS:-

Ext.P1: Copy of the order in E.P.No.718/1996.

Ext.P2: Copy of the Judgment in RCRO.6/2004.

RESPONDENTS' EXHIBITS:- Nil.

(true copy)

P.S. TO JUDGE.

Kvs/-

K. Balakrishnan Nair
&
T.R. Ramachandran Nair, JJ.

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W.P.(C).NO.19804 of 2006-G

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Dated this the 15th day of October, 2007

JUDGMENT

T.R. Ramachandan Nair, J.

The petitioner herein has approached this court aggrieved by Ext.P2 judgment rendered by the revisional authority. The matter arises in execution.

2. The short facts of the case are the following: The tenanted premises is numbered as T.C. 27/324. The original landlord of the premises was one C.P. Chellappan Pillai who filed B.R.C. (OP) No.293/1974 to get eviction of the tenant from the premises. The original tenant was one Madhavan Pillai and the petitioner herein is his wife. The eviction order became final after the appeal and the revision petition were dismissed. E.P. No.435/1980 was filed by the original landlord and while the execution petition was pending, he died. He had two sons who were impleaded as additional decree holder and second additional counter petitioner (the respondent herein) in the execution petition. While so, the additional decree holder (one C.P. Rajendran) sold his right over the

petition schedule building to the judgment debtor and filed a memo stating that he is not pressing the execution petition and accordingly the same was dismissed on 21.3.1994. The present proceedings arise from the execution petition filed by his brother Shri C.P. Raveendran who is the original respondent herein (died). His claim is based on a partition deed. The tenant resisted the execution contending that the landlord has no exclusive right over the petition schedule building and the tenant after having purchased rights of his brother, stepped into the shoes of the landlord. It is contended that the said purchase by the tenant of the right of the decree holder is admitted in the execution petition itself.

3. The execution court dismissed the execution petition finding that as the present decree holder can only claim one half of the share in the petition schedule building, even if his claim is accepted, the delivery of the entire building cannot be ordered. The execution court found that the decree holder failed to prove that he has exclusive title over the petition schedule building. It was also found, on a reference to Ext.A2 partition deed executed between the family members of the landlords, that there is nothing to hold that the petition schedule building was allotted to the present decree holder as per the partition deed. These findings have been reversed by the appellate court, against which the tenant has approached this

court in the present proceedings.

4. Learned counsel for the petitioner submitted that the approach made by the revisional court is clearly erroneous and perverse. It is further pointed out that the revisional court has wrongly cast the burden on the tenant to produce evidence in support of the claim that a portion of the building has been purchased by him. The court below overlooked the fact that the decree holder in the execution petition itself has admitted the said transfer made by the brother of the decree holder. Learned counsel contended that the landlord has failed to prove his claim for getting delivery of the building, as rightly found by the execution court. It is submitted that at any rate, he is not entitled to get delivery of the entire petition schedule building. His remedy is to establish the rights over his share of the building in appropriate proceedings and the decree is not executable as such and therefore the execution petition has to be dismissed.

5. These contentions are opposed by the learned counsel for the additional respondents herein who are the legal representatives of the first respondent who died pending this writ petition.

6. The learned counsel for the petitioner has brought to our notice that the landlord, respondent herein had filed O.S. No.893/1994 before the Sub Court, Trivandrum arraying his brother Shri C.P. Rajendran and the

deceased original tenant Shri Madhavan Pillai, seeking for a decree to declare that the plaintiff is the lawful and true owner in respect of the petition schedule building herein and for a further declaration that sale deed No. 2315/1994 is non est and does not bind the plaint schedule property and the shop rooms. He had further prayed for a decree allowing him to recover possession of the plaint schedule property from the second defendant tenant. It is stated that the above suit was dismissed as withdrawn as per the order dated 8.8.2001 in I.A.No.2718/2001. A true copy of the plaint was made available to us for perusal at the time of argument.

7. The learned counsel for the petitioner herein also submitted that the landlords had filed E.P. No.435/1980 after the death of their father, which was dismissed as not pressed. The first respondent herein was additional counter petitioner in that E.P. also. The judgment debtor had purchased the petition schedule building from the brother of the first respondent herein Shri C.P. Rajendran, as per sale deed No.2315/1994 which is admitted in the execution petition presently filed. It is also submitted that the first respondent did not raise any objection when the earlier execution petition was closed as not pressed. It is therefore submitted that as such the order cannot be executed as the tenant has acquired title over the property as per the sale deed.

8. Learned Munsiff dismissed the execution petition after holding that the present decree holder admitted that the tenant had purchased the petition schedule building from his brother as seen from the execution petition itself. As regards Ext.A2 partition deed, it was observed by the execution court that he do not find anything to hold that the petition schedule building has been allotted to the share of the present execution petitioner as per Ext.A1 partition deed. It was also found that if at all he had got a claim as the legal heir of the original decree holder, he can claim only one half share in the petition schedule building and the execution petition to get delivery of the entire plaint schedule building cannot be allowed.

9. The District Judge reversed the above findings as per Ext.P2 judgment. The order of the execution court was reversed mainly finding that the landlord being a legal heir of the original landlord, was entitled to get eviction and the tenant did not produce any records to substantiate that he had acquired rights over the schedule premises. This finding is apparently perverse in the light of the fact that in the execution petition itself, it is admitted that the brother of the landlord had transferred his rights to the judgment debtor as per a sale deed and that the earlier execution petition was dismissed on 23.1.1994. Therefore, the finding by the

revisional court that the burden is on the tenant to prove that the judgment debtor had acquired full right over the schedule building, is apparently erroneous in the light of the clear admission in the execution petition itself. In fact, in Ext.P2 judgment it was observed that Exts.A1 and A2 do not clearly mention the T.C. Numbers of the schedule premises and whether the T.C. Numbers shown in the documents are in relation to the schedule building, is also not discernible from the materials on record. In spite of the above, the learned District Judge entered a finding that the remedy of the tenant is to seek partition and separate possession of his share in appropriate proceedings. Actually, when the landlord has chosen to execute the decree based on the partition deed, the burden was on him to show that the schedule building has been allotted to his share. Lastly, the District Judge found that as legal heir of the deceased landlord, he is fully competent to proceed with the execution, even if the tenant has acquired fractional right, and as the tenant is bound by the decree. In a petition for eviction, there cannot be an order to evict the tenant from part of a building. Such proceedings are not contemplated by the Kerala Buildings (Lease and Rent Control) Act. Therefore, there cannot be a partial eviction of the tenanted premises. Subsequent events which have a fundamental impact on the order of eviction cannot be overlooked.

10. Learned counsel for the landlords then submitted that as the District Judge has directed restoration of the eviction proceedings and to proceed with the same and dispose it of in accordance with law, the tenant is having ample chance to prove his claim. We find that the said argument is not correct in the light of the fact that while restoring the execution petition, the District Judge has entered clear findings in paragraph 8 of Ext.P2 that the landlord is entitled to get eviction both in his capacity as legal heir of the original landlord as well as on his own right as acquired by way of Ext.A2 partition deed. The execution court cannot therefore sit in appeal over the said findings of the revisional court and cannot decide the matter afresh and can only order eviction of the tenant from the premises by allowing the execution petition. We find that in the light of the clear admission by the landlord in the execution petition itself that his brother had transferred his rights over the property to the tenant, the revisional court was not justified in reversing the findings of the execution court in that regard. Therefore the findings rendered by the revisional court are perverse warranting interference in these proceedings. The order of eviction is not liable to be executed as such.

11. Therefore, Ext.P2 is quashed and Ext.P1 order passed by the Principal Munsiff is upheld. We make it clear that this will not prejudice

the remedy of the additional respondents/landlords herein to establish their right in respect of any portion of the building under Ext.A2 partition deed in appropriate proceedings.

The writ petition is disposed of in the above terms. No costs.

(K. Balakrishnan Nair, Judge.)

(T.R. Ramachandran Nair, Judge.)

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